

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

<b>(1) DEPARTMENT</b> Public Works	<b>(2) MEETING DATE</b> 6/19/2012	<b>(3) CONTACT/PHONE</b> Jeff Werst, Design Division Manager (805) 781-4480	
<b>(4) SUBJECT</b> Submittal of Bid Opening Report for the Los Osos Wastewater Project, Collection System Areas A & D, Los Osos, CA, Contract No. 300448.08.01.AD.			
<b>(5) RECOMMENDED ACTION</b> In accordance with applicable State Law, it is our recommendation that your Honorable Board: <ol style="list-style-type: none"> <li>1. Reject the bid submitted by UNKS Construction, Inc. on the grounds of non-responsiveness due to:             <ol style="list-style-type: none"> <li>a. failure to fully complete the bid proposal form,</li> <li>b. failure to complete and sign the Good Faith Effort Documentation Summary Form, and,</li> <li>c. failure to submit a bid bond obtained from a surety company meeting the requirements of the bid documents;</li> </ol> </li> <li>2. Find that the error by ARB, Inc. in using the incorrect Bid Schedule does not constitute a material error and is a waiveable irregularity; and</li> <li>3. Accept the Bid of ARB, Inc., with the correction of eliminating the duplicate Bid Item No. 29 "HMA Price Index Fluctuation Adjustment"; and</li> <li>4. Award the subject contract to ARB, Inc., the lowest responsive, responsible bidder, with a bid of \$26,223,855.00; and</li> <li>5. Authorize a construction contingency amount up to \$2,622,385, to be utilized for change orders subject to and in accordance with the Project Construction Change Order Policy (Resolution No. 2012-82), approved by your Board on April 3, 2012, for a final total construction amount of \$28,846,240.</li> </ol>			
<b>(6) FUNDING SOURCE(S)</b> Fund Center 430	<b>(7) CURRENT YEAR FINANCIAL IMPACT</b> \$28,846,240.00	<b>(8) ANNUAL FINANCIAL IMPACT</b> N/A	<b>(9) BUDGETED?</b> Yes
<b>(10) AGENDA PLACEMENT</b> <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. _____) <input checked="" type="checkbox"/> Board Business (Time Est. 30 min.)			
<b>(11) EXECUTED DOCUMENTS</b> <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A		<b>(12) BUDGET ADJUSTMENT REQUIRED?</b> BAR ID Number: N/A <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
<b>(13) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)</b> N/A		<b>(14) W-9</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
<b>(15) LOCATION MAP</b>  Attached	<b>(16) BUSINESS IMPACT STATEMENT?</b>  No	<b>(17) AGENDA ITEM HISTORY</b>  <input type="checkbox"/> N/A    Date 4/3/12, #18	
<b>(18) ADMINISTRATIVE OFFICE REVIEW</b>  <i>Nikki J. Schmidt</i>			
<b>(19) SUPERVISOR DISTRICT(S)</b> District 2 -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works

Jeff Werst, Design Division Manager

John Waddell, Los Osos Wastewater Project Manager

VIA: Dave Flynn, Deputy Director of Public Works

DATE: 6/19/2012

SUBJECT: Submittal of Bid Opening Report for the Los Osos Wastewater Project, Collection System Areas A & D, Los Osos, CA, Contract No. 300448.08.01.AD.

## **RECOMMENDATION**

In accordance with applicable State Law, it is our recommendation that your Honorable Board:

1. Reject the bid submitted by UNKS Construction, Inc. on the grounds of non-responsiveness due to:
  - a. failure to fully complete the bid proposal form,
  - b. failure to complete and sign the Good Faith Effort Documentation Summary Form, and,
  - c. failure to submit a bid bond obtained from a surety company meeting the requirements of the bid documents;
2. Find that the error by ARB, Inc. in using the incorrect Bid Schedule does not constitute a material error and is a waiveable irregularity; and
3. Accept the Bid of ARB, Inc., with the correction of eliminating the duplicate Bid Item No. 29 "HMA Price Index Fluctuation Adjustment"; and
4. Award the subject contract to ARB, Inc., the lowest responsive, responsible bidder, with a bid of \$26,223,855.00; and
5. Authorize a construction contingency amount up to \$2,622,385, to be utilized for change orders subject to and in accordance with the Project Construction Change Order Policy (Resolution No. 2012-82), approved by your Board on April 3, 2012, for a final total construction amount of \$28,846,240.

## **DISCUSSION**

In accordance with direction from your board, bids for the subject contract were opened on May 17, 2012.

Eight bids were received. They are as follows:

Engineer's Estimate	\$26,247,000.00
UNKS Construction, Inc.	\$ 24,008,737.29
ARB, Inc.	\$ 26,323,855.00 *
Vido Artukovich & Son, Inc.	\$ 34,927,670.00
Don Kelley Construction, Inc.	\$ 35,976,229.00
W.A. Rasic Construction, Inc.	\$ 36,250,000.00
Preston Pipelines	\$ 36,474,792.00 *
Mountain Cascade, Inc.	\$ 37,308,370.00
John Madonna Construction Co, Inc.	\$ 41,899,596.00

\* Note: Bidder utilized an unofficial bid sheet that included a double entry, Bid Item No. 29, for one of the contingency allowances.

### **General Discussion**

The Los Osos Wastewater Project Collection System design was completed by Camp Dresser and McKee (CDM) and the plans and specifications for the Area A & D contract were released for bidding on April 3, 2012, based on your Board's approval. Bids on this contract were opened on May 17, 2012 and subsequently reviewed by the Public Works Department, in coordination with County Counsel. The criteria for evaluation of the bids by Public Works is provided in Article 19 of Section 00200 of the bidding documents and includes (a) checking the bid forms for errors, (b) determining whether or not the bids comply with the requirements for submitting bids, and (c) determining whether or not the bids are nonconforming, nonresponsive, unbalanced, or conditional. In reviewing the bid received by the apparent low bidder, UNKS Construction, Inc. ("UNKS"), several irregularities were found and it is recommended that the bid be rejected as nonresponsive.

The Public Works Department has evaluated the bid submitted by UNKS and has identified the following irregularities:

1. Paragraph 13.02 of Section 00200 "Instructions to Bidders" requires that all blanks on the Bid Form shall be completed, and that a Bid price shall be indicated for each Bid Item listed therein. Paragraph 14.01.A of Section 00200 states that: "Bidders shall submit a Bid for each unit basis item of work a unit price and a total for the item, or for each lump sum item a total for the item for each item of Work listed in the Bid schedule." UNKS did not submit a bid unit price or bid price for Item No. 24, Miscellaneous Concrete, on the Bid Schedule, and this has been identified by our Department as an irregularity with the bid submitted by UNKS.
2. In accordance with Paragraph 7.01 of Section 00410 "Bid Form" completion of Section 00490 Good Faith Effort Documentation Summary Form ("GFE Form") is a condition of the Bid and was required to be signed and submitted with the Bid. The GFE Form documents the contractor's effort to solicit participation from Disadvantaged Business Enterprises (DBE's) and is necessary to meet Project funding conditions of both the U.S. Department of Agriculture (USDA) and State Water Board which require the County to certify that a good faith effort was

completed. UNKS left blank or did not complete Sections 1-4, 6, and 7 of the GFE Form, and did not sign the GFE Form. Not completing or signing the GFE Form has been identified by our Department as an irregularity with the Bid submitted by UNKS.

3. In accordance with Paragraph 8.01 of Section 00200 "Instructions to Bidders," a bid must be accompanied by bid security in the form of a certified check or bank money order or a Bid bond (Section 00430) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of Section 00700 "General Conditions." In accordance with Paragraph 5.01.B of Section 00700, "All bonds shall be executed by a California 'admitted surety insurer,' as defined in California Code of Civil Procedure Section 995.120 and listed by the California Insurance Commissioner pursuant to Insurance Code Section 12070. Bonds issued by a California admitted surety listed in the latest versions of the U.S. Department of Treasury Circular 570 shall be deemed to be accepted unless specifically rejected by Owner." In accordance with Paragraph 5.02.A of Section 00700, "All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required."

The bid bond submitted with the bid was obtained from OIC Marianas Insurance Corporation ("OIC"). OIC is not an insurer authorized to do business in California, is not listed in current version of U.S. Department of the Treasury's Listing of Certified Companies updated May 12, 2012, and is not listed by California Insurance Commissioner as an "admitted surety insurer". Staff contacted a representative of the surety via e-mail to confirm this. A copy of the e-mail is provided as Attachment "A" to this Board letter. After review with County Counsel, it was determined that the bid bond was not obtained by a surety company meeting the requirements of paragraphs 5.01 and 5.02 of Section 00700, and our Department has therefore identified this as an irregularity with the bid submitted by UNKS. Moreover, the attached e-mail from the surety entity indicates that they identify themselves as a firm of last resort for construction bonding of companies that are rejected by locally admitted sureties.

In consideration of these facts and after discussion of the matter with County Counsel, it is our recommendation to your Board that the bid from UNKS Construction, Inc. be rejected, and that consideration be given to the next lowest bidder, ARB, Inc. UNKS was given written notice of the County's intent to reject its bid (dated May 31, 2012), a copy of which is provided as Attachment "B" to this report. Also provided as Attachment "C" and "D", respectively, is a copy of a letter from UNKS (dated June 1, 2012) and a 30-page fax of additional documents (received June 6, 2012) submitted in response to the County's notice of intent to reject their bid. After reviewing the UNKS response letter and additional faxed documents with County Counsel, it was determined that the letter did not provide sufficient basis to justify their request that our Department reconsider our recommendation to reject their bid proposal. A memorandum (dated June 7, 2012) prepared by Public Works Department staff discussing the response letter and fax from UNKS is provided as Attachment "E" to this report.

#### ARB, Inc.

With regard to the bid submittal by the second low bidder, ARB, Inc., the bidder utilized an unofficial bid sheet that was posted on the County's website which included a double entry, Bid Item No. 29, for one of the contingency allowances. One other Contractor also mistakenly used the unofficial bid sheet. The additional bid item was an allowance of \$100,000 for "HMA Price Index Fluctuation Adjustment," which was already included on the Bid Schedule under Bid Item No. 25. The Bid Item duplication had been discovered and corrected by staff prior to your Board's authorization on April 3, 2012 to advertise for bids. Consequently, the correct Bid Schedule was included in the

Clerk's copy of the contract and all hard copies of the contract sold to planholders by our Department. However, an electronic copy of contract documents with the incorrect Bid Schedule was posted on the Design Division website for two weeks and when discovered was immediately corrected via a "Request for Information" response posted to the website and forwarded electronically to each of the planholders. It is assumed that ARB, Inc. downloaded the incorrect version of the Bid Schedule during the period it was posted to the website. It appears that the 6th lowest bidder, Preston Pipelines, also used the same erroneous form, as their Bid Schedule also included Bid Item No. 29. This error has no effect on the bid items submitted by the Contractors and is therefore appropriate to waive.

### Bid Allowances

The Bid Schedule included a total of four allowances, Bid Items 25-28. The intent of the allowances, as described in Paragraphs 1.25 through 1.28 of Section 01025 "Measurement and Payment" of the Contract Documents, is to provide an allowance as part of the Contract Price to pay for extra work as directed by the Engineer. Each of the allowances (Bid Items 25-28) are shown on the Bid Schedule with the dollar amounts already filled in, and the Bidder is therefore not able to provide pricing for these items. In other words, all bids are equal on these allowances. Since the Bidder does not have a choice in selecting the bid amount for the allowances, the inadvertent inclusion of the duplicate Bid Item No. 29 by ARB, Inc. on their Bid Schedule does not have any effect on their Bid items and is therefore deemed to be a waiveable irregularity in this instance. A copy of ARB's Bid Form, as reviewed and certified by Public Works' accounting staff, is provided as Attachment "F" to this report for your reference.

In consideration of these facts and after discussion of the matter with County Counsel, it is our recommendation to your Board that you make the finding that the error by ARB, Inc. in using the incorrect Bid Schedule does not constitute a material error and is a waiveable irregularity, and that your Board adjust the Bid of ARB, Inc. by eliminating the duplicate Bid Item No. 29 "HMA Price Index Fluctuation Adjustment." Subject to your Board's approval of the above findings and recommendations, the bid proposal from the second lowest bidder, ARB, Inc., has been determined to be responsive, and it is therefore recommended that your Board award the contract to ARB, Inc.

### OTHER AGENCY INVOLVEMENT/IMPACT

The U.S. Department of Agriculture (USDA) and State Water Board are jointly financing the Project and provide oversight of engineering and consulting agreements and construction contracts. Numerous other federal, state and local agencies are involved in the project. County Counsel has reviewed this item and is in concurrence with rejecting the bid submitted by UNKS Construction, Inc. and awarding the contract to ARB, Inc.

### FINANCIAL CONSIDERATIONS

The Collection System Project (Areas A & D) engineer's estimate is \$26,247,000. The awarded cost of this contract is \$26,223,855 plus contingencies of \$2,622,385 for a total construction amount of \$28,846,240 and is included in the overall budget approved by your Board on May 17, 2011 of \$173,398,416. If the remaining collection system construction bids are obtained in amounts that are reflective of Areas A & D, then savings of \$20 million or more may be anticipated upon final completion of the wastewater project.

Please see Exhibit "A" for an estimated cost breakdown of the project.

## **RESULTS**

Approval of the recommended action will result in this project being constructed, which continues the progress toward a community wastewater project for Los Osos. Completion of the Los Osos Wastewater Project will contribute to the County's goal of providing a safe and healthy community.

File: Contract No. 300448.08.01.AD

Reference: 12JUN19-BB-1

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## **ATTACHMENTS**

1. Vicinity Map
2. Exhibit A - Project Cost Estimates
3. A - E-mail Regarding Surety Bond, dated May 22, 2012
4. B - Letter to UNKS of Intent to Reject Bid, dated May 31, 2012
5. C - Response Letter from UNKS, dated June 1, 2012
6. D - Additional faxed Documents from UNKS, received June 6, 2012
7. E - Memorandum Regarding UNKS Letter, dated June 7, 2012
8. F - Copy of ARB's Bid Schedule